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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE**

LIFESCAN, INC. and
LIFESCAN SCOTLAND, LTD.,

Plaintiffs,

v.

SHASTA TECHNOLOGIES, LLC,
DECISION DIAGNOSTICS CORP.,
PHARMATECH SOLUTIONS, INC., and
CONDUCTIVE TECHNOLOGIES, INC.,

Defendants.

Case No. CV11-04494-EJD (PSG)

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING AMENDMENT
OF SUPPLEMENTAL CONTENTIONS**

WHEREAS, pursuant to the Patent Scheduling Order in this case (D.E. 131), Plaintiffs LifeScan, Inc. and LifeScan Scotland, Ltd. (collectively, "Plaintiffs") were directed to serve Amended Infringement Contentions on October 8, 2012, which were in fact served on October 23, 2012;

WHEREAS, three weeks later, counsel for Plaintiffs noted an inaccuracy in the portion of their Amended Infringement Contentions concerning Patent Local Rule 3-1(f);

WHEREAS, upon recognition of the inaccuracy, counsel for Plaintiffs notified Defendants of their desire to amend the portion of their Amended Infringement Contentions concerning Patent Local Rule 3-1(f) to read as follows: "The asserted claims of the '862 patent are entitled to the Feb. 14, 1996 filing date of the application that issued as U.S. Patent No. 5,708,247;"

WHEREAS, prior to serving their Amended Invalidity Contentions, counsel for Defendants InstaCare Corp. and Pharmatech Solutions, Inc. (collectively "InstaCare") indicated that they had no objection to Plaintiffs' proposed amendment;

WHEREAS, Defendants Shasta Technologies LLC and Conductive Technologies Inc. (collectively "Shasta") served invalidity contentions on November 26, 2012 that identified the priority date of the '862 patent as February 14, 1996, consistent with Plaintiffs proposed amendment;

WHEREAS, Plaintiffs' diligence in notifying Defendants regarding the inaccuracy in their Amended Infringement Contentions prior to Defendants' service of Amended Invalidity Contentions, InstaCare's consent to the proposed amendment, and Shasta's service of Amended Invalidity Contentions in conformance with Plaintiff's proposed amendment constitute a showing of good cause for amendment;

WHEREAS, because the parties are still in the early stages of discovery claim construction and have yet to file any briefs on claim construction with the Court, and Defendants do not object to Plaintiffs amendment, Defendants will not be prejudiced by the requested amendment;

WHEREAS, on December 5, 2012, counsel for SHASTA notified Plaintiffs of their desire to Amend Exhibit B to Shasta Technologies' and Conductive Technologies' November 22, 2012, Amended Invalidity Contentions to correct a typographical error;

WHEREAS, Plaintiffs have no objection to Shasta's desired amendment;

WHEREAS, Shasta's diligence in notifying Defendants regarding the typographical error and Plaintiffs' consent to the proposed amendment constitute a showing of good cause;

WHEREAS, because the parties are still in the early stages of claim construction and have yet to file any briefing with the Court, and Plaintiffs do not object to Shasta's amendment, Plaintiffs will not be prejudiced by the requested amendment;


IT IS HEREBY STIPULATED by and between the parties hereto through their respective attorneys of record, subject to approval by the Court, that: (1) Plaintiffs may amend the portion of their Infringement Contentions concerning Patent Local Rule 3-1(f) to read as follows: "The asserted claims of the '862 patent are entitled to the Feb. 14, 1996 filing date of the application that issued as U.S. Patent No. 5,708,247," and (2) Shasta may amend its Invalidity Contentions to change the patent number listed at the top of page 1 of Exhibit B to "4,415,666" rather than "445,666."

Dated: December 10, 2012

<p><u>/s/ Eugene M. Gelernter</u></p> <p>Eugene M. Gelernter (<i>admitted pro hac vice</i>) PATTERSON BELKNAP WEBB & TYLER LLP 1133 Avenue of the Americas New York, New York 10036 Telephone: (212) 336-2000 Facsimile: (212) 336-2222 E-Mail: emgelernter@pbwt.com</p> <p>Richard Goetz (S.B. #115666) O'MELVENY & MYERS LLP 400 South Hope Street Los Angeles, California 90071-2899 Telephone: (213) 430-6000 Facsimile: (213) 430-6407 E-Mail: rgoetz@omm.com</p> <p>Sue Roeder (S.B. #160897) O'MELVENY & MYERS LLP 2765 Sand Hill Road Menlo Park, California 94025 Telephone: (650) 473-2600 Facsimile: (650) 473-2601</p>	<p><u>/s/ Lael D. Andara</u></p> <p>Robert Andris (S.B. # 130290) Lael D. Andara (S.B. # 215416) ROPER, MAJESKI, KOHN & BENTLEY 1001 Marshall Street, Suite 500 Redwood City, California 94063-2052 Telephone: (650) 364-8200 Facsimile: (650) 780-1701 randris@rmkb.com landara@rmkb.com</p> <p>Attorneys for Defendants SHASTA TECHNOLOGIES, LLC and CONDUCTIVE TECHNOLOGIES, INC.</p> <p><u>/s/ Carole Handler</u></p> <p>John J. Shaeffer (S.B. # 138331) Carole Handler (S.B. # 129381) Jeff Grant (S.B. # 218974) LATHROP & GAGE LLP 1888 Century Park East, Suite 1000 Los Angeles, California 90067 Telephone: (310) 789-4600</p>
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6 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

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8 Hon. Paul S. Grewal

9 U.S. Magistrate Judge

Dated December 13, 2012

I hereby attest that I have on file written permission to sign this stipulation from all parties whose signatures are indicated by a "conformed" signature (/s/) within this e-filed document.

/s/ Sean Marshall
Sean Marshall